

APPEAL NO. 170635

FILED MAY 23, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 15, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the (date of injury), compensable injury extends to L4-5 disc degeneration and L5-S1 disc degeneration; (2) the respondent (claimant) has not reached maximum medical improvement (MMI) and therefore, no impairment rating (IR) is assigned; (3) the claimant is not entitled to change treating doctors to ¹ (Dr. R) pursuant to Section 408.022; and (4) the claimant had disability beginning on November 23, 2016, and continuing through the date of the hearing.

The appellant (self-insured) appeals the hearing officer's determinations regarding the issues of extent of injury, MMI, IR and disability as being contrary to the evidence and further complains that the hearing officer made findings on the wrong issue and conditions. The appeal file does not contain a response from the claimant.

The hearing officer's determination that the claimant is not entitled to change treating doctors to Dr. R pursuant to Section 408.022 was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), at least in the form of a contusion to the buttocks.

The claimant testified that she was injured when she turned quickly and fell backward landing on a cement floor.

EXTENT OF INJURY

¹ We note that both the hearing officer in her Decision and Order and the Benefit Review Conference Report mistakenly refer to Dr. R as Dr. R.

The record reveals that the extent-of-injury issue certified for resolution at the CCH was as follows:

1. Does the compensable injury of (date of injury), extend to and include L4-5 spondylosis, L5-S1 spondylosis, L5-S1 disc degeneration, L4-5 disc degeneration, L4-5 disc protrusion, and bilateral ovarian cysts?

After going on the record at the CCH, the parties agreed to revise the extent-of-injury issue as follows:

1. Does the compensable injury of (date of injury), extend to and include L4-5 disc degeneration and L4-5 disc protrusion?

That portion of the hearing officer's determination that the compensable injury of (date of injury), extends to L4-5 disc degeneration is supported by sufficient evidence and is affirmed.

The hearing officer's decision correctly states the issue as revised by agreement of the parties; however, her Finding of Fact Nos. 3 and 4, her Conclusion of Law No. 3 and the Decision and first paragraph of her Decision and Order address L5-S1 disc degeneration, a condition that had been resolved by a Benefit Dispute Agreement (DWC-24) in evidence signed by the parties on January 25, 2017, and which condition was not part of the dispute before her. We note further that the hearing officer's decision fails to determine whether the compensable injury extends to a disc protrusion at L4-5, a disputed condition that was made a part of the extent-of-injury issue by agreement of the parties.

Because the hearing officer failed to make a determination on each of the conditions made a part of the extent-of-injury issue before her, and because she exceeded the scope of her authority by making a determination on a condition that was not before her, we reverse that portion of the hearing officer's determination that the (date of injury), compensable injury extends to L5-S1 disc degeneration and we remand the extent-of-injury issue to the hearing officer to make a determination consistent with this decision.

MMI/IR

Given that we have reversed a portion of the hearing officer's extent-of-injury determination and remanded that issue to the hearing officer to make a determination consistent with this decision, we reverse the hearing officer's determination that the claimant has not reached MMI and therefore, no IR is assigned, and we remand the

issues of MMI and IR to the hearing officer to make a determination consistent with this decision.

DISABILITY

Given that we have reversed a portion of the hearing officer's extent-of-injury determination and remanded that issue to the hearing officer to make a determination consistent with this decision, we reverse the hearing officer's determination that the claimant had disability beginning on November 23, 2016, and continuing through the date of the hearing, and we remand the issue of disability to the hearing officer to make a determination consistent with this decision.

SUMMARY

We affirm that portion of the hearing officer's determination that the compensable injury of (date of injury), extends to L4-5 disc degeneration.

We reverse that portion of the hearing officer's determination that the (date of injury), compensable injury extends to L5-S1 disc degeneration and we remand the extent-of-injury issue to the hearing officer to make a determination consistent with this decision.

We reverse the hearing officer's determinations that the claimant has not reached MMI and therefore, no IR is assigned, and we remand the issues of MMI/IR to the hearing officer to make a determination consistent with this decision.

We reverse the hearing officer's determination that the claimant had disability beginning on November 23, 2016, and continuing through the date of the hearing, and we remand the issue of disability to the hearing officer to make a determination consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer is to consider all of the evidence, make findings of fact, and render conclusions of law regarding the issues of whether the compensable injury of (date of injury), extends to L4-5 disc protrusion; whether the claimant has attained MMI, and if so the IR; and whether the claimant had disability from November 23, 2016, to the date of the CCH resulting from an injury sustained on (date of injury).

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision

must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **FEDEX GROUND PACKAGE SYSTEM, INC. (a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge